



## **FEDERAL TRADE COMMISSION**

**[File No. 192 3000]**

### **MoviePass, Inc.; Analysis of Proposed Consent Order to Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement; request for comment.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis of Proposed Consent Order to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order – embodied in the consent agreement – that would settle these allegations.

**DATES:** Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

**ADDRESSES:** Interested parties may file comments online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY**

**INFORMATION** section below. Please write “MoviePass, Inc.; File No. 192 3000” on your comment, and file your comment online at <https://www.regulations.gov> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Thomas B. Carter (214-979-9372), Federal Trade Commission, Southwest Regional Office, 199 Bryan Street, Suite 2150, Dallas, TX 75201.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR § 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained at <https://www.ftc.gov/news-events/commission-actions>.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Write “MoviePass, Inc.; File No. 192 3000” on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the <https://www.regulations.gov> website.

Due to the COVID-19 pandemic and the agency’s heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the <https://www.regulations.gov> website.

If you prefer to file your comment on paper, write “MoviePass, Inc.; File No. 192 3000” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex D), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website at <https://www.regulations.gov>, you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential"—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the <https://www.regulations.gov> website—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC Website at <http://www.ftc.gov> to read this Notice and the news release describing the proposed settlement. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

### **Analysis of Proposed Consent Order to Aid Public Comment**

The Federal Trade Commission ("FTC" or "Commission") has accepted, subject to final approval, an agreement containing a proposed consent order ("Proposed Order") from MoviePass, Inc., a corporation, Helios and Matheson Analytics, Inc. ("Helios"), a corporation, Mitchell Lowe, individually and as an officer of MoviePass, Inc., and Theodore Farnsworth, individually and as an officer of Helios ("Respondents"). The Proposed Order has been placed on the public record for 30 days to receive comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's Proposed Order.

This matter involves Respondents' advertising, promotion and sale of the movie-viewing subscription service "MoviePass," which offered consumers access to one movie per day at their local movie theaters for a monthly subscription price. The FTC complaint challenges two aspects of Respondents' marketing of MoviePass:

First, the complaint alleges that Respondents' offer of one movie per day was deceptive due to several measures Respondents took to prevent consumers from using the service as promised—measures that included invalidating certain consumers' passwords,

adding a difficult and defective ticket verification procedure to view movies, and placing undisclosed usage caps on frequent users.

The complaint alleges that this conduct violated two laws the FTC enforces. First, the FTC alleges the conduct to be a “deceptive act[] or practice[]” that violates Section 5(a) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. 45(a). The conduct described above was deceptive because Respondents engaged in it to prevent consumers from using MoviePass once per day as advertised. Second, the FTC alleges that Respondents violated the Restore Online Shoppers’ Confidence Act (“ROSCA”), 15 U.S.C. 8403, through the same conduct by failing to disclose the steps that they took to prevent consumers from using MoviePass once per day. This failure violated ROSCA in two ways—by failing to disclose all material terms of the transaction as required by 15 U.S.C. 8403(1) and by failing to secure consumers’ express informed consent to the transaction before charging their financial accounts as required by 15 U.S.C. 8403(2).

In addition to the deceptive marketing of MoviePass’s “one movie per day” service, the complaint further alleges that Respondents MoviePass, Inc., Helios, and Lowe misrepresented the data security measures they took to protect consumers’ personal information against unauthorized access. The complaint alleges that Respondents’ actions constitute unfair or 1 deceptive acts or practices and the making of false advertisements, in violation of Section 5(a) of the FTC Act.

The Proposed Order is designed to prevent Respondents from engaging in similar acts or practices in the future. It includes injunctive relief to address these alleged violations and to prohibit similar and related conduct:

- Part I prohibits Respondents from future misrepresentations similar to those at issue in the complaint by prohibiting them from misrepresenting that:
  - A service will allow consumers to view one movie per day at their

local theaters;

- A service will allow consumers to view any movie, in any theater, at any time; and
  - Respondents will take reasonable administrative, technical, physical, or managerial measures to protect consumers' personal information from unauthorized access.
- Part I also features ancillary relief relating to the challenged conduct by prohibiting misrepresentations relating to (1) the total costs to purchase, receive, or use, and the quantity of, any good or service, (2) any material restrictions, limitations, or conditions to purchase, receive, or use the product or service, (3) the extent to which Respondents otherwise protect the privacy, security, availability, confidentiality, or integrity of consumers' personal information, and (4) any other material fact.
- Parts II—VI provide ancillary relief relating to the data security practices of MoviePass, Inc., Helios, and Lowe. The provisions thus only apply to businesses these three respondents operate.
  - Part II requires a comprehensive information security program for any enterprise that collects consumers' personal information, requiring among other things:
    - That the information security program contain safeguards that are based on the volume and sensitivity of the personal information at risk;
    - That testing and monitoring of the safeguards are conducted regularly but no less often than once a year; and
    - That the information security program be documented, evaluated, and adjusted in light of any changes to business

operations or new technological advancements.

- Parts III and IV respectively require the three respondents (1) to obtain an initial and then biennial third-party information security assessments and (2) to cooperate with the third parties conducting the assessments.
- Part V requires the three respondents to report to the Commission any event involving consumers' personal information that constitutes a reportable event to any U.S. federal, state, or local government authority.
- Part VI mandates that the three respondents submit an annual certification regarding their compliance with the Proposed Order's data security requirements.
- Parts VII through XI are reporting and compliance provisions. Part VII mandates that all Respondents acknowledge receipt of the Proposed Order and, for 20 years, distribute the Proposed Order to certain employees and agents and secure acknowledgments from recipients of the Proposed Order. Part VIII requires that Respondents submit compliance reports to the FTC one year after the order's issuance and submit additional reports when certain events occur. Part IX requires that, for 20 years, Respondents create certain records and retain them for at least 5 years. Part X provides for the FTC's continued compliance monitoring of Respondents' activity during the Proposed Order's effective dates. Part XI is a provision "sunsetting" the Proposed Order after 20 years, with certain exceptions. Respondents MoviePass, Inc. and Helios are exempt from Sections II—X of the Proposed Order until their bankruptcy cases are closed, and these bankruptcies led the FTC to not seek a monetary judgment in this matter.

The purpose of this analysis is to facilitate public comment on the Proposed Order. It is not intended to constitute an official interpretation of the complaint or Proposed Order, or to modify in any way the Proposed Order's terms.

By direction of the Commission.

**Joel Christie,**

*Acting Secretary.*

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